

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, *et
al.*,

Plaintiffs,

v.

GINA MCCARTHY, *et al.*,

Defendants.

Case No. 15-CV-369-CVE-FHM

Motion for Injunction Pending Appeal

Pursuant to Federal Rule of Civil Procedure 62, Plaintiffs State of Oklahoma and Oklahoma Department of Environmental Quality (collectively, “Oklahoma”) move the Court for an injunction pending appeal.

In support, Oklahoma states as follows:

1. The Court issued a final judgment in this matter denying Oklahoma’s request that it enjoin Defendants from implementing, enforcing, or giving any effective to the EPA Power Plan, 79 Fed. Reg. 34,830 (June 18, 2014), or other regulation concerning electric utility generating units under the authority of Clean Air Act Section 111(d), 42 U.S.C. § 7411(d). *See* Judgment of July 17, 2015 (Doc No. 29).

2. Federal Rule of Appellate Procedure 62(c) provides that “[w]hile an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may...grant an injunction on terms for bond or other terms that secure the opposing party’s rights.”

3. Oklahoma has timely appealed the court’s Judgment of July 17 and its orders denying Oklahoma’s motions for preliminary injunction. *See* Notice of Appeal Doc. No. 30).

4. In determining whether to issue an injunction pending appeal, the court must consider the general four-factor test for an injunction: (1) whether the movant is likely to succeed on the merits of its appeal; (2) whether the movant will be irreparably injured absent an injunction; (3) whether issuance of the injunction will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *See Homans v. City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir. 2001).

5. As the test for an injunction pending appeal applies factors that are nearly identical to those that Oklahoma has briefed within the last several weeks, as support for this motion Oklahoma incorporates by reference its Motion for Preliminary Injunction of July 1 (Doc. No. 5) and supporting brief (Doc. No. 6), its Renewed Motion for Preliminary Injunction of July 17 (Doc. No. 24), and all supporting materials.

6. Given that the Plaintiffs and Defendants are sovereigns or public officials sued only in their official capacities and this matter concerns a matter of public law, no security is necessary to protect the opposing party's rights.

Relief Requested

For these reasons, Oklahoma requests that the court enjoin Defendants from implementing, enforcing, or giving any effective to the EPA Power Plan, 79 Fed. Reg. 34,830 (June 18, 2014), or other regulation concerning electric utility generating units under the authority of Clean Air Act Section 111(d), 42 U.S.C. § 7411(d), during the pendency of Oklahoma's appeal.

Dated: July 20, 2015

Respectfully submitted,

/s/ Andrew M. Grossman

DAVID B. RIVKIN, JR.
LEE A. CASEY
MARK W. DELAQUIL
ELIZABETH PRICE FOLEY
ANDREW M. GROSSMAN
BAKER & HOSTETLER LLP
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20002
(202) 861-1731
drivkin@bakerlaw.com

E. SCOTT PRUITT, OBA #15828
ATTORNEY GENERAL OF OKLAHOMA
PATRICK R. WYRICK, OBA #21874
SOLICITOR GENERAL
313 NE 21st Street
Oklahoma City, OK 73105
(405) 521-4396
(405) 522-0669 (facsimile)
Service email: fc.docket@oag.state.ok.us
Scott.Pruitt@oag.ok.gov

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, *et
al.*,

Plaintiffs,

v.

GINA MCCARTHY, *et al.*,

Defendants.

Case No. 15-CV-369-CVE-FHM

**(Proposed) Order Granting Plaintiffs'
Motion for an Injunction Pending Appeal**

This matter comes before the Court on the Motion for an Injunction Pending Appeal (Doc. No. 31) filed by Plaintiffs. The Court, having considered the papers filed in support of the Motion and the opposition thereto, finds that Plaintiffs have demonstrated that they are likely to succeed on the merits of their appeal, that they will suffer irreparable harm in the absence of injunctive relief, that Defendants will suffer no harm if such relief is granted, and that the public interest favors the entry of such relief.

Accordingly, it is hereby ordered that:

- 1) Plaintiffs' Motion for an Injunction Pending Appeal is GRANTED.
- 2) Defendants, their respective agents, officers, employees, successors, and all persons acting in concert with each or any of them are hereby ENJOINED AND RESTRAINED from finalizing, implementing, enforcing, or giving any effect to:
 - a. The EPA Power Plan, 79 Fed. Reg. 34,830 (June 18, 2014), or any outgrowth of that proposal; and
 - b. Any regulations or other action regarding electric utility generating units under the authority of Clean Air Act Section 111(d), 42 U.S.C. § 7411(d).

3) This Order shall become effective immediately and shall continue in effect until the United States Court of Appeals for the Tenth Circuit's mandate issues in this matter.

It is so ordered.

Dated: _____

By: _____

Hon. Claire V. Eagen
U.S. District Court Judge

Certificate of Service

I hereby certify that on July 20, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of Oklahoma by using the Court's ECF system. Service was accomplished on the following by the ECF system:

Justin David Heminger
US Department of Justice
601 D Street, N.W.
Washington, D.C. 20004-0663
202-514-2689
justin.heminger@usdoj.gov

Attorney for Defendants

By: /s/ Andrew M. Grossman